STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2001- 852

December 31, 2001

PUBLIC UTILITIES COMMISSION
Standards for Billing, Credit and Collection, Termination of Service, and Customer Information for Eligible, Non-Eligible, and Interexchange Telecommunications Carriers (Chapters 290, 291 and 292)

NOTICE OF RULEMAKING

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Notice of Rulemaking (Notice), we initiate a rulemaking proceeding to establish standards for billing, credit and collection, and termination of service. The rulemaking proposes three separate Chapters that apply to: (1) eligible telecommunications carriers (ETCs); (2) non-eligible telecommunications carriers (non-ETCs); and (3) interexchange carriers (IXCs), respectively. The requirements of these Chapters will replace the existing requirements of Chapter 81, Residential Utility Service Standards for Credit and Collection Programs and Chapter 86, Disconnection and Deposit Regulations for Non-Residential Utility Services, that currently apply to telecommunications services and the providers of those services.

II. BACKGROUND

A. Procedural History

By Notice of Rulemaking in Docket No. 2001-43 dated February 2, 2001 (February 2nd Notice), the Commission commenced a proceeding to consider what have become the initially proposed Chapters 290, 291 and 292[1]. Consistent with the February 2nd Notice, a hearing was held on March 21, 2001 to receive comments from the public on the initial rules. No one testified at the March 21st hearing.

The February 2nd Notice set April 30, 2001 as the deadline for the filing of written comments on the initial rules. By Procedural Order issued on May 1, 2001, the comment deadline was extended to May 31, 2001 to provide parties additional time to comment. Written comments on the initial rules were filed by the following entities:

[1]For the purposes of this Notice, we refer to the rules proposed in Docket No. 2001-43 as "initial rules" and the rules proposed in the instant proceeding as "amended rules."

AT&T Communications (AT&T)
Community Service Telephone Company (CST)
MCI WorldCom, Inc. (WorldCom)
Mid-Maine Communications (Mid-Maine)
Northland Telephone Company of Maine, Sydney Telephone Company, Standish Telephone Company, China Telephone Company, and Maine Telephone Company (Telephone Companies)
Office of the Public Advocate (OPA)
Saco River Telephone and Telegraph (SRT&T)
Sprint Communications Company (Sprint)
Telephone Association of Maine (TAM)
Verizon Maine (Verizon)

In response to the written comments filed, the Commission held a technical conference in Docket No. 2001-43 on July 25, 2001 to give commenters the opportunity to provide additional information regarding critical issues raised in the written comments. By Procedural Order in Docket No. 2001-43 dated August 10, 2001, the Hearing Examiner listed 10 questions regarding the initial rules that were identified during the July 25th technical conference and invited interested persons to respond in writing to those questions. Responsive comments were filed by OPA, Oxford Networks (Oxford), TAM, Verizon, and WorldCom.

In her August 10th Procedural Order, the Hearing Examiner noted that the Commission intended to terminate the rulemaking in Docket No. 2001-43 and initiate a new rulemaking proceeding with new proposed rules that reflect oral and written comments received in Docket No. 2001-43.[2] By separate Procedural Order issued today, we formally terminate the rulemaking proceeding in Docket No. 2001-43.

In the instant proceeding, we continue the effort initiated in Docket No. 2001-43. The amended rules attached to this Notice were drafted with benefit of comments made by participants in Docket No. 2001-43. Those comments, and our response to those comments, are summarized in Section III below.

[2] The August 10th Procedural Order stated that "[b]ecause Maine's Administrative Procedures Act limits the amount of time the Commission may take in conducting a rulemaking and because the APA's deadline is fast approaching, the Commission intends to solicit comments to the questions asked at the Technical Conference and then terminate this rulemaking proceeding without adopting any rules. After a review of all written comments in this proceeding, the Commission will re-write its proposed rules and initiate another rulemaking proceeding later this fall. All interested persons will have the opportunity to comment on the newly proposed rules at that time." As noted above, the Commission considered both written and oral comments provided by participants in Docket No. 2001-43 when drafting the proposed rules that are appended to the instant Notice.

B. Status of Telecommunications Market in Maine

The status of the telecommunications market in Maine is summarized at pages 1-2 of our February 2, 2001 Notice of Rulemaking in Docket No. 2001-43.[3] For the reasons contained in that summary, we conclude that requirements of the existing Chapters 81 and 86 must be revised to provide the appropriate level of consumer protection for the level of competition in each market segment. The goals that animate the attached rules are unchanged from those expressed in the February 2nd Notice in Docket No. 2001-43. These goals are:

* Ensure that basic telephone service is available at affordable rates to all citizens of Maine;
* Remove regulatory barriers to competition;
* Account for the asymmetry that exists in today's telecommunications market; and
* Substitute disclosure for regulation in the interexchange and local exchange markets where competition exists.

C. Structure of the Amended Rules

1. Number of Rules

In Docket No. 2001-43, we proposed to separate rules for ETCs (Chapter 290), non-ETCs (Chapter 291) and IXCs (Chapter 292). In written comments submitted in Docket No. 2001-43, the OPA supported our proposed three-tiered approach that would establish a separate rule for each type of carrier. Mid-Maine, SRT&T and TAM recommended that a single rule should cover both ETCs and non-ETCs to ensure consistency and fairness in our treatment of such carriers. Verizon urged us to adopt a single rule for all three types of carriers to foster competition and promote the best interests of Maine customers. We continue to believe that the best way to provide the necessary level of consumer protection for the level of competition in the various market segments that exist in Maine today is to is to promulgate separate rules for ETCs, non-ETCs and IXCs. As with the rules proposed in Docket No. 2001-43, the rules appended to this Notice regulate local exchange service more heavily than interexchange service and place heavier disclosure requirements on providers of interexchange service than on providers of local exchange service.

[3] The February 2, 2001 Notice, and the initial rules appended to that Notice, may be viewed on the Commission's web site located at www.state.me.us\mpuc. Hard copies of the February 2nd Notice and initial rules considered in Docket No. 2001-43 may also be obtained by contacting the Commission at (207) 287-3831.

2. Asymmetrical Treatment of ETCs and Non-ETCs in the Amended Rules

The initial rules proposed in Docket No. 2001-43 imposed different requirements on ETCs and non-ETCs. The OPA supported the proposed asymmetrical treatment of ETCs and non-ETCs. However, TAM, SRT&T, CST and Verizon opposed the proposed asymmetrical treatment because, they argued, the more prescriptive rules for ETCs would put ETCs at a competitive disadvantage.

We continue to believe asymmetrical rules for ETCs and non-ETCs are justified because ETCs receive federal USF support and must accept all customers. As we stated in our February 2nd Notice:

> ETCs are in the unique position of providing service to customers who may otherwise be unable to obtain service. In contrast, a non-ETC has no obligation to accept any given customer. Customers of a non-ETC who lose their service can always obtain service through an ETC serving his or her area, as Federal law requires that the ETC accept all customers who meet the minimum requirements.

We emphasize that many of the asymmetrical characteristics of the amended rules are motivated by the fundamental difference between basic service and all other types of service. This fundamental difference is grounded in the fact that the basic service provided by an ETC is a necessity. Because of its "provider of last resort" status, service from an ETC is the only option for many residential and small commercial customers. Because of this fact, consumer protection concerns apply to ETC service that do not apply to non-ETCs or IXCs (where customers have other choices for service). Consequently, more prescriptive regulation is necessary for ETCs to ensure that all customers in the State of Maine have access to basic service at just and reasonable rates.

Several commenters in Docket No. 2001-43 asserted that the asymmetrical treatment of ETCs and non-ETCs in the initial rules creates a variety of competitive concerns. As discussed in Section III below, we have attempted to address many of these concerns in the amended rules.

D. General Observations Regarding the Amended Rules

There are four general observations about the amended rules that deserve specific comment and emphasis at the outset of this Notice. First, we wish to correct an apparent misimpression that is reflected in several comments filed in Docket No. 2001-43. The initial rules, as well as the amended rules, do not prohibit the disconnection of toll service or optional services. The rules would prevent the disconnection of local service for the non-payment of toll or optional services. This prevents ILECs from leveraging their monopoly power for basic service to collect amounts due for toll or optional service. The rules do not, however, prevent a carrier from disconnecting toll or optional services. In fact, by separating toll and optional services from basic service, the process for disconnecting toll and optional services becomes less restrictive. For instance, most of limitations on disconnection relate to local/basic service. An ETC can still deny/disconnect toll or optional services provided to a customer who does not pay her bill – the rule is silent on this. The same is true for deposits. The proposed rules do not prohibit the collection of a deposit for toll and optional services. They rules merely prevent the inclusion of these amounts with a deposit requirement for basic service. Again, the process for collecting a deposit for toll or optional services is less restrictive under the proposed rules than the existing rules.

Second, several commenters in Docket No. 2001-43 asserted that the initial rules were unnecessarily prescriptive and unreasonably burdensome. For instance, TAM stated that the expansion of the existing requirements in Chapter 81 "add an unnecessary burden to compliance with no showing of actual need....” The Telephone Companies concurred with TAM on this point, noting that “as a general matter...the provisions of Chapter [81] and 86 should not be amended unless an explanation for any such change is provided.” We generally agree with these observations and have attempted to modify each of the amended rules so that the requirements imported from Chapters 81 and 86 into the amended rules are not more prescriptive than the corresponding requirements that currently apply to telecommunication service providers under Chapters 81 and 86. In Section III below, we identify where we have incorporated existing Chapter 81 requirements into the amended rules and explain why we have done so. We invite comment on any such provision that may exceed existing requirements in Chapter 81.

Third, in comments filed in Docket No. 2001-43, TAM, Verizon and the Telephone Companies noted the differences between the needs of residential and non-residential customers and asserted that the proposed rules should apply only to residential customers. We acknowledge that the needs of residential and non-residential customers differ in many respects, but we continue to believe that the requirements of these rules should cover non-residential customers in certain specified contexts. We believe that the advantages of having a single rule for both residential and nonresidential customers outweigh the advantages of having two separate rules. In response to comments, however, we have modified sections of the amended rules to make them consistent with the existing Chapter 86. In Section III below, we identify the sections we have modified in the amended rules and explain why we have done so. We invite comment on any such provision that may exceed the existing requirements in Chapter 86.

Finally, we note that the amended rules include several minor, non-substantive changes in format from the initial rules. These changes are intended to make the format of each rule internally consistent and to make the format of all three rules consistent. We invite comments on any aspect of the rules’ format.

E. Format of this Notice

Like the February 2nd Notice, this Notice addresses all three of the amended rules. We continue to believe that a single Notice provides the best vehicle for comparing and contrasting the provisions of the three proposed rules. To accomplish this, this Notice is organized by discrete subject, such as "application for service," "billing and payment standards" and "disconnection and termination procedures." Within each subject area, we discuss the proposed treatment for ETCs, non-ETCs and IXCs in the amended rules. In addition to identifying the similarities and differences of the three amended rules, the Notice discusses the rationale behind particular rule requirements and requests comments regarding each of the amended rules. In many instances, our rationale for a provision in the amended rules is the same as our rationale for comparable provisions in the initial rules as set forth in our February 2nd Notice. In such cases, we do not repeat the explanation here, but instead urge the interested reader to review the February 2nd Notice for an explanation for the provisions in question.

III. DISCUSSION OF INDIVIDUAL SECTIONS

A. Purposes –Chapters 290, 291 and 292 - §1

Section 1 in each of the amended rules states that the three purposes of the rules are: (1) to inform customers; (2) to prevent discrimination and ensure reasonable access to service; and (3) to establish minimum consumer protection standards. These are the same purposes that were identified in the initial rules proposed in Docket No. 2001- 43. No commenter in that proceeding objected to the any of these stated purposes.

B. Definitions – Chapters 290, 291 and 292 - §2

At pages 4-5 of the February 2nd Notice in Docket No. 2001-43, we discuss the derivation and justification for several of the definitions found in the definitions sections of the initial rules.

1. Chapter 290

The definitions in the amended Chapter 290 are identical to the definitions in the initial rule.

2. Chapters 291 and 292

The definitions in the amended Chapters 291 and 292 are identical to the definitions in the initial rules, except that the definition of "optional service" in §2(T) in the initial Chapter 291 and §2(O) in the initial Chapter 292 has been deleted from the amended Chapters 291 and 292. As noted above, Chapters 291 and 292 permit non-ETCs and IXCs to disconnect a customer irrespective of the type of service being provided. Consequently, there is no need for a separate definition of "optional service" in Chapters 291 and 292. Separate definitions for "basic service" and "optional service" have been retained in the amended Chapter 290 because, under the amended rule, ETCs are prohibited from disconnecting a customer's basic service for non-payment of optional services.

C. Jurisdiction – Chapters 290, 291 and 292 - §3

As noted above, each of the amended rules applies to a different type of carrier or service provider and, to the extent not preempted by federal law, to the services provided by such carriers. Chapter 290 applies to all ETCs, Chapter 291 to all basic service providers that are not designated as ETCs, and Chapter 292 to all telecommunications carriers subject to the jurisdiction and supervision of the Commission that offer interexchange service. In its comments submitted in Docket No 2001-43, Verizon recommended that the reference to "collection efforts" in §3(B) of each of the rules be deleted because the rules apply to far more than just collection practices. We agree and have made the corresponding change in the amended rules.

D. Emergency Moratorium – Chapters 290, 291 and 292 - §4

Each of the amended rules contains parallel emergency moratorium requirements. The emergency moratorium provisions in the amended rules are identical to those contained in the initial proposed rules. These provisions are based on language found in §15 of Chapter 81 but do not include the time limits contained in that section. The amended rules would allow the Commission or the Director of the CAD, in an emergency, to declare a partial or complete moratorium on the termination or disconnection of telecommunications service by any or all carriers. Because we would carefully consider any potential moratorium to determine the appropriate period and continually monitor the emergency for the continued need of the moratorium, we have not proposed any specific time limits to the moratorium.

In comments filed in Docket No 2001-43, Verizon recommended that the authority to declare an emergency moratorium under this section be limited to the Commission. Verizon asserted that such extraordinary authority should not be delegated to the Director of the Commission's Consumer Assistance Division (CAD). Because of the inherent need in an "emergency" situation to establish a disconnection moratorium as quickly as possible, as well as the Director of CAD's knowledge regarding when such a moratorium is needed, we disagree with Verizon and have not modified this section.

E. Interruption of Service – Deleted

Each of the initial rules contained a provision entitled "Interruption of Service" that defined a "service interruption" and established notice requirements regarding such interruptions. Several commenters in Docket No. 2001-43 objected to the requirements of this section. TAM, SR&T and Mid-Maine asserted that notifying customers of outages of less than one-hour in duration is unnecessary, burdensome and costly. Verizon contended that the reference in §5(C)(1) to Chapter 20 and the requirements of §5(D) are unnecessary and should be deleted. WorldCom argued that the terms "good cause" and "reasonable period of time" in §5(E) are unacceptably vague. Verizon asserted that the refund/credit provisions in §5(F) should be modified to refer to a proportional refund or credit as provided in the carrier's tariff. WorldCom argued that §5(F) should be modified to create an exception where the service interruptions are neither planned nor scheduled and which occur for reasons beyond the control of the carrier.

The Commission agrees that many of the comments regarding this section have merit. We have therefore deleted the entire "Interruption of Service" section from the amended rules and will address this issue in a separate rulemaking.

F. Non-Discrimination – Chapters 290, 291 and 292 - §5

This section in the amended rules is identical to corresponding provisions in the initial rules and is self-explanatory. This section requires each carrier to provide service and apply credit and collections policies to applicants and customers without discrimination on the basis of race, color, ancestry, sex, age, national origin, religion, marital status, receipt of public assistance or the exercise of rights under state or federal consumer protection laws. No commenter objected to this provision in Docket No. 2001-43.

G. Customer Privacy – Chapter 290 - §6; Chapters 291 and 292 - §7

Current Commission rules are silent on the confidentiality of customer records in the possession of a utility. 35-A M.R.S.A. § 704(5) and Chapter 89 only address the treatment of utility customer information in the possession of the Commission. Each of the initial rules included the same provision governing customer privacy that would have required a carrier to maintain the confidentiality of a customer's personal information, including name, address, telephone number, usage and historic payment information. Without the specific written consent of the customer, that information could not have been released to any entity other than the Commission except for purpose of directory listings, debt collection by or for the carrier, credit reporting pursuant to state and federal law, or responding to law enforcement agencies pursuant to lawful process.

In our February 2nd Notice in Docket No. 2001-43, we invited comments on whether the initial rules struck an appropriate balance between a customer's right to protect personal information and a utility's ability to carry out its obligations. In comments submitted in that Docket, the OPA asserted that the customer privacy provisions in the initial rules "strike a good balance between a customer's desire to protect his or her personal information and the utility's ability to carry out its obligations." However, several carriers objected to the customer privacy provisions in the initial rules. TAM contended that these provisions might unintentionally limit the current business practices of both LECs and IXCs. TAM recommended that the PUC follow existing federal guidelines for protecting a customer's Billing Name and Address (BNA)[4] information. TAM further noted that the FCC is in the process of promulgating a rule on Customer Proprietary Network Information (CPNI)[5] and asserted that "Maine should not take steps which may conflict with the eventual language of the Federal rule in this area." SRT&T, the Telephone Companies and Mid-Maine agreed with TAM's comments regarding and CPNI and BNA information.

Verizon recommended that the initial rules be modified to allow a carrier to notify its customers of potential uses of customer information and provide customers with an opportunity to "opt out" before the carrier shares certain customer information outside of Verizon. Verizon also recommended that the initial rules be amended to recognize an exception for designated products and services, such as Caller ID and direct dialed numbers like 911, 800, 888, 887 and 900, that display a customer's name and telephone number as an integral part of the service.

AT&T asserted that the initial rules' customer privacy provisions are contrary to existing FCC rules and, at a minimum, should be made consistent with federal rules. Sprint noted that as written, the initial rules appear to conflict with Sprint's nationwide practice of sharing customer information among its various divisions.

We agree with commenters that the initial rule's customer privacy provision may conflict with the necessary transfer of customer information between carriers, as well as the use of customer information for desirable, optional services such as caller ID. We also have reviewed existing FCC rules regarding BNA and CPNI and believe that they provide sufficient protection of customer information. We have therefore deleted the initial rules' customer privacy requirements from the amended rules and replaced them with the requirement that the carrier shall comply with the applicable FCC rules. We invite further input on whether this modification sufficiently balances a customer's privacy interests with a carrier's ability to provide service and discharge its obligations.

H. Unfair or Deceptive Practices – Chapter 291 and 292 - §6

This section of the amended rules is identical to the parallel section in the initial rules and is self-explanatory. A carrier may not use a company name that is deceptive or unreasonably confusing to consumers. All carriers are subject to the Maine Unfair Trade Practices Act, 5 M.R.S.A. §§ 205-A - 214 and related consumer protection statutes. Verizon was the only commenter in Docket No. 2001-43 to address this provision of the initial rules. It noted that it "concurs with the Commission's intent in [Chapters 291 & 292, §7] and would urge the Commission whenever possible to look to existing regulations for a uniform set of consumer protection rules. To the extent that

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[4]See 47 CFR §64.1201.

[5]See 47 CFR §64.2001 et. seq.

statutes and rules already exist, there is no need to duplicate these efforts within the Commission's rules." We do not understand Verizon's comment regarding this section. If Verizon is suggesting that referencing the Maine Unfair Trade Practices Act in our rules is unnecessarily duplicative, we disagree. If Verizon wishes to do so, it may clarify its comment regarding this section of the amended rules.

We do, however, agree with Verizon that a uniform set of consumer protection rules is desirable whenever possible. We also believe that an ETC should not be allowed to have a deceptive name and should comply with the Maine Unfair Trade Practices Act, 5 M.R.S.A. §§ 205-A - 214 and related consumer protection statutes. We have, therefore, added this requirement to the amended Chapter 290.

I. Customer Rights – Chapter 290 - §7

The customer rights provision in our initial Chapter 290 represented an expansion of the requirements currently found in Chapter 81 and required ETCs to provide all basic service customers with an annual notice and summary of their rights and responsibilities. In written comments submitted in Docket No 2001-43, Verizon asserted that the Commission should not require a single blanket notification of basic customer rights and argued that an annual summary of these rights is redundant and costly to produce.

In response to Verizon's comments, we have modified this provision in the amended rule by deleting the requirement for annual notice and replacing it with the requirement that an ETC provide a summary of a customer's rights and responsibilities to (1) all new customers and (2) current customers affected by a significant change in the ETC's terms and conditions. The amended provision provides that notice may be given through direct mailing, bill inserts, or by including the notice in the carrier's directory. This requirement, and the contents of the notice specified in the amended rule, are consistent with existing requirements in Chapter 81 that currently apply to all ETCs.

J. Application for Service – Chapters 290 and 291- §8

Chapter 290 and 291 of the initial rules contained provisions governing the responsibilities of ETCs and non-ETCs when a customer applies for service. We received many comments in Docket No. 2001-43 regarding these provisions. These comments, and our response to those comments, are summarized below.

1. Chapter 290

Verizon asserted that the different requirements regarding application for service in the initial rules for ETCs and non-ETCs "is unlawful and must be eliminated. All carriers should be subject to the identical obligations with respect to extending service to *qualified* applicants in a non-discriminatory manner.... Verizon Maine is obligated to offer telephone service to all *qualified* applicants in its service territory. The critical issue is determining whether an applicant is properly qualified." (emphasis in original)

As discussed in our February 2nd Notice in Docket No. 2001-43, federal regulations require that an ETC offer service to all applicants as a condition of the ETC's receipt of federal universal service support. 47 C.F.R. § 54.201. This section of Chapter 290 reflects these federal requirements by generally prohibiting an ETC from refusing to provide basic service to an applicant. An ETC, however, may condition the provision of service on the payment of an undisputed amount overdue for basic service previously provided by the ETC and/or require the applicant to provide a deposit. We believe that these exceptions provide the necessary balance between requiring an ETC to provide service to all customers and requiring an ETC to essentially provide "free service" to customers who fail to make payments, as well as address Verizon's concerns regarding the provision of service.

Under §9(A)(1)(a) in the initial Chapter 290, an ETC would have been required to offer a payment arrangement on an undisputed balance before service is initiated. As we noted in the February 2nd Notice, this was intended to allow a customer who has previously incurred charges to pay those charges over time while providing the customer and the general public with the benefit of having that customer on the public switched network. In its comments in Docket No. 2001-43, Verizon objected to this requirement because it "is inappropriately limited solely to past amounts for 'basic' telephone service. There is no reason why an applicant should not be compelled to pay for *all* charges before obligating the carrier to commence service." (emphasis in original)

As discussed in Section II(C)(2) above, there is a fundamental difference between basic service and all optional services. This fundamental difference justifies different requirements relating to basic and optional services. We continue to believe that the provision of a customer's basic service should not be contingent on that customer's payment for optional services. Section 8(A)(1) of the amended rule, therefore, only allows an ETC to condition the granting of service on the applicant paying an undisputed amount overdue for previous basic service. We hasten to note that Chapter 290 places no corresponding restrictions on an ETC's provision of optional service. Accordingly, an ETC is not obligated to provide optional service and may condition the provision of optional services as it sees fit.

Under §9(A)(1)(b) of the initial Chapter, if an ETC failed to identify a past due balance before service was initiated, and there was no fraud involved, an ETC would have waived its right to condition or disconnect service on a prior amount overdue. In comments filed in Docket No. 2001-43, TAM argued that the existing Chapter 81 requirements regarding application for service are appropriate and should be maintained in Chapter 290. Accordingly, TAM recommended that a carrier should be allowed 60 days to discover bad debt on an applying customer's record. SRT&T and the Telephone Companies expressed similar concerns about this provision of the initial rule. Mid-Maine recommended that a carrier be allowed to transfer a past due balance up to 90 days after the application of service. Verizon objected to the waiver in this section of the initial rule but did not propose a specific amendment to it.

As previously discussed in section 2(D) of this Notice, we agree that the amended rules should not be more restrictive than the existing requirements of Chapter 81 and have modified this section in the amended rule to allow an ETC 60 days to discover bad debt on an applying customer's record. We have also added the existing Chapter 81 requirement at §8(A)(1)(c) of the amended rule that an ETC must allow an applicant at least 30 days to pay or make a payment arrangement on any outstanding debt identified under §8(A)(1)(b).

Section 9(A)(2) of the initial Chapter 290 governed deposits for residential service and provided that a deposit must be based on the existence of an undisputed amount overdue for basic service billed to the applicant within the prior six years. Under the initial rule, overdue amounts relating to toll service could not be considered when determining whether an applicant must pay a deposit. In addition, the amount of the deposit was limited to the equivalent of charges for two months of basic service. Mid-Maine asserted that the deposit requirements of the initial rule do not provide adequate protection to the company and recommended that the rule be modified to permit a $100 security deposit for residential customers. Verizon objected to this deposit provision as "a significant restriction from the existing rule, which permits customer deposits whenever the carrier can establish that the customer presents a "credit risk."

Section 9(A)(3) of the initial rule governed deposits for non-residential applicants and permitted an ETC to require a deposit regardless of the customer's creditworthiness, but further limited such deposit to the applicant's basic service charges for two months. The Telephone Companies and Verizon asserted that the proposed limitation on deposits for non-residential customers does not adequately protect the company. The Telephone Companies argued that the existing requirement in Chapter 86, which allows for a deposit to be calculated upon a non-residential customer's highest two estimated bills, should be incorporated into this rule. Mid-Maine recommended that the rule should be amended to allow a $200 security deposit for non-residential customers.

We have not amended the deposit provisions in the amended Chapter 290. These deposit provisions in §8(A)(2) for residential customers and §8(A)(3) for non-residential customers are consistent with existing provisions in Chapters 81 and 86 and our policy of separating toll and local service. While we agree with Verizon that Chapter 81 allows the collection of a deposit whenever the carrier can establish that the customer presents a "credit risk," this has proven to be a subjective analysis that lacks uniformity among customers. The proposed rule removes this subjectivity and provides a reasonable, concrete process for collecting a deposit from customer.

Section 8(B) of the amended rule is identical to the parallel provision in the initial rule and provides that an ETC may not require that an applicant pay for basic service provided in another person's name. No one commented on the parallel provision in our initial rule.

Section 8(C) of the amended rule is identical to the parallel provision in the initial rule and requires an ETC to inform the applicant of the least cost class of basic service available to the applicant at the time of the application for service. In its comments in Docket No. 2001-43, Verizon argued that "[w]hile a carrier can fully describe its service options, the carrier should not be charged with the responsibility to pick the customer's service options." Section 8(C) does not require an ETC to "pick" anything for the applicant. It simply requires an ETC to inform the applicant of the least cost class of basic service available. Given the many different levels of service already available and the likely development of new types of services as competition develops, we continue to believe it is important that customers be told what the most basic service available to them is, and how much it costs, so that they can make an informed decision regarding the type of service they ultimately request.

We understand that ascertaining "the lowest cost option" available to a customer may be difficult due to calling patterns unique to each customer. We also believe that certain, basic information can be provided from each customer that will allow ETCs to comply with this requirement. We seek comment on this assumption. Can an ETC ascertain the lowest calling plan for a customer in a way that will not be excessively burdensome to the customer or the ETC? Are there other, less burdensome options available that will achieve the same goals as this requirement? If so, please describe. Will this provision create enforcement problems, i.e. who will determine if a the rate or plan was indeed the "lowest rate available?"

Section 8(D) of the amended rule is identical to the parallel provision in the initial rule and provides that nothing in Chapter 290 shall prevent an ETC from offering basic service bundled with other services, provided that the ETC also offers a "minimum basic service option" that complies with Chapter 290. No one commented on the parallel provision in the initial rule.

2. Chapter 291

Section 9 of the initial Chapter 291 required a non-ETC to inform all applicants that it may disconnect a customer for any reason with 30 days notice, may charge a termination fee, what the geographic scope of the customer's local calling area will be, who the presubscribed toll carriers available to the customer will be, and the billing period for basic service, including any advance billing requirements. As noted previously, we have attempted to modify the amended rules so that their requirements are consistent with parallel requirements in Chapter 81 and 86 that already apply to telecommunications carriers. Section 8(A) of the amended Chapter 291 has therefore been modified to require each non-ETC to inform all applicants that it may disconnect residential customers for any reason with 14-days notice and nonresidential customers with 7-days notice.

We also added section 8(E) to the amended Chapter 291 that requires non-ETCs to identify, upon request by a customer, the lowest cost, basic service calling plan available. This modification makes Chapter 291 consistent with Chapters 290 and 292.

K. Confirmation of Order with Written Terms and Conditions – Chapters 290 and 291 - §9; Chapter 292 - §8

Each of the initial rules required the applicable carrier to provide each customer with written confirmation of an order for service within five business days. The initial rules required that the confirmation include information relating to all fees associated with the service, terms and conditions, instructions on how to dispute charges, and any other relevant information. The initial rules also allowed a customer the option of canceling an order without penalty within five days of the postmark of the confirmation notice.

In comments submitted in Docket No 2001-43, Verizon objected to these confirmation requirements on the grounds that they were unnecessary and that they would require an additional and costly new step to the existing process. Mid-Maine argued that the confirmation requirement would impose a significant financial burden on the company and recommended that a generic "welcome packet" be sent within 30 days of a new order. AT&T asserted that the proposed confirmation requirements are unnecessary and recommended that if the confirmation requirements are not deleted, the carrier should be allowed to notify customers electronically if the new order were secured electronically. WorldCom argued that a carrier should be allowed 10 days to provide the required confirmation. Sprint asserted that the proposed confirmation requirement is unnecessary, inefficient and potentially quite expensive.

Verizon and Mid-Maine also objected to the 5-day rescission period in the initial rules because of the potential for a customer to accumulate substantial charges during this rescission period. AT&T also objected to the inclusion of a rescission provision in these rules because it would require a 5-day waiting period during which the order could not be processed. AT&T argued that if the Commission decides to keep a rescission provision, the rules should be amended to allow a customer to waive the 5-day waiting period.

The purpose of this section was to provide a mechanism that would allow a customer to confirm that she is receiving the terms and prices that she believes was promised by a telemarketer. We continue to believe that this is important, but have modified the confirmation requirement in each of the amended rules. We agree with the commenters that that the provision of the initial rule that required confirmation of the order be sent prior to the service taking effect, as well as the provision requiring the confirmation of all orders for services, create problems and are not necessarily consistent with our intent for this section. We therefore have made the following changes: 1) the amended rules relate only to outbound sales calls and explicitly provide that orders for services generated by inbound calls from customers do not require written confirmation; 2) the amended rules require that the written confirmation be provided to the customer no later than the time the customer receives the first bill for each new service and allow the confirmation to be included with the first bill for each service;[6] and 3) the amended rules permit confirmation through electronic means in instances where the order was placed electronically.

L. Transfer of Service to Another Location – Chapter 290 - §10

Section 11 of the initial Chapter 290 was designed to clarify that a customer who transfers service from one location to another or who orders new service within 30 days of disconnecting prior service cannot be considered an "applicant." This provision was intended to prevent an ETC from imposing a deposit and other "applicant" requirements on persons who are merely transferring their service, but with an intervening time lag. In comments submitted in Docket No. 2001-43, Verizon asserted that service should not be extended to the new location of the customer if there is an undisputed, unpaid balance on the old account that would have justified disconnection. We agree and have clarified in §10(B) of Chapter 290 that an ETC may transfer the customer's current account balance to the customer's new account when the customer requests a transfer of service to a new location. This provision is consistent with existing requirements in Chapter 81.

M. Notification of Price Increases and Changes in Terms and Conditions - Chapter 291 - §10; Chapter 292 - §9

Section 11 of the initial Chapter 291 required non-ETCs to notify customers 30 days in advance of any price increases or changes in terms and conditions, but excluded any increase or changes associated with individual customer contracts or promotional offerings (provided the customer was notified of the changes before entering the contract or accepting the offer). An identical requirement for IXCs was included at §10 of the initial Chapter 292.

In 2001, the Legislature enacted 35-A M.R.S.A. §7307, which relates to price increases for intrastate toll service. Among other things, the new law requires telephone carriers providing intrastate toll service to give 25-day advance notice of any price increase or any change in terms and conditions that will result in a price increase. Section 7307 also provides that a customer who does not receive the required notice is not obligated to pay for any corresponding increases in the bill and requires the carrier to refund or credit any increased payments that were made without adequate notice having been given. Chapter 291, §10 and Chapter 292, §9 of the amended rules have been modified to reflect the requirements of §7307.

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[6] The 5-day rescission period has been deleted from the amended rules.

N. Billing and Payment Standards – Chapter 290 and 291 - §11; Chapter 292 - §10

The billing and payment standards provisions of the initial rules were similar for all three types of carriers. They were based upon the FCC's "Truth-In-Billing" rules and NARUC's Truth-In-Billing Model Rule. In our February 2nd Notice, we noted that the FCC's rules and our initial rules together

> promote consistency and ensure that state efforts compliment, and are consistent with, FCC and Federal Trade Commission (FTC) rules concerning consumer protection and cramming. Both the FCC's rules and our proposed rules will help consumers make informed choices and will facilitate telecommunications competition by setting minimum standards for bills. The proposed rules also ensure that information on bills is accurate, understandable, and useful and contains consistent definitions and labels for common charges.

The following discussion addresses three sub-topics within the billing and payment provisions of the amended rules: (1) bill content; (2) bill format; and (3) miscellaneous provisions.

1. Bill Content

In comments submitted in Docket No. 2001-43, TAM argued that "[t]he appropriate method for handling the billing format is through Rules established at the Federal level for Truth-in-Billing. Any additional information or formatting provided beyond the requirements of the FCC will lead to additional costs with very limited demonstrable benefit." SRT&T and Mid-Maine concurred with TAM that Chapter 290's requirements regarding billing format should mirror the requirements of the FCC's Truth-in-Billing rules. Verizon argued that "the proposed rules inappropriately seek to rigidly prescribe every facet and detail of a carrier's operational and billing systems.... Rather than attempt to micromanage a carrier's operations, the Commission should set forth clear guidelines of the types of information that would provide customers with adequate information and let carriers design their own bills to meet those guidelines." WorldCom opposed the initial rules' requirements regarding bill content as burdensome and unnecessary. AT&T expressed general support of the truth-in-billing model adopted by NARUC in 2000.

The initial rules specifically listed information that must be contained on a carrier's bill.[7] The information required in the initial rules is information

[7] The initial Chapter 290, §12(E) identified 15 specific items that an ETC must include on its bills; Chapter 291, §12(A) identified 15 items that must appear on a non-ETC's bills; Chapter 292, §11(A) identified 18 items that an IXC must include on its bills.

that is already required by Chapter 81. We continue to believe that this information is fundamental to a customer's understanding of her rights and responsibilities. We have therefore preserved the initial rules' bill content requirements in the amended rules.[8]

2. Bill Format

Each of the initial rules included three subsections that related to the format of a carrier's bill entitled "Quantification of billed charges," "Bill organization" and "Descriptions of billed charges."[9]

We have reviewed the FCC's Truth-in-Billing rules and concur with those commenters who asserted that these rules provide sufficient direction regarding bill format. Accordingly, we have deleted the three subsections in the initial rules that governed bill format and have replaced them with a single section in each of the amended rules that provides that a carrier's bill format must comply with the FCC's Truth-in-Billing rules.[10]

3. Miscellaneous Provisions

Each of the initial rules included a provision entitled "Notice of Rate Changes" that required that "[a]ll line items which reflect an addition of service, a change in rates, or a change in rate plans shall be clearly and conspicuously identified as either 'new,' 'rate increase,' 'rate decrease,' or 'change in rate plan' as applicable."

Sprint argued that this provision "inappropriately attempts to specify what should be included on a customer's bill, rather than how customers should be notified of changes in rates." Sprint also asserted that this provision would require Sprint to produce a unique bill for Maine that would be costly and perhaps impossible for Sprint to fully implement. Sprint further asserted that "[a] rule that requires expensive billing format changes will create a barrier to entry due to the increased costs associated with modification of billing systems." WorldCom argued that this provision should be deleted because it is unnecessary and expensive.

We have deleted this provision from each of the amended rules. We have deleted the requirement from Chapter 290 because an ETC cannot increase rates without prior approval from the Commission. We have deleted the requirement

[8] The applicable sections in the amended rules are Chapter 290, §11(E); Chapter 291, §11(A) and Chapter 292, §10(A).

[9] The applicable sections of the initial rules are Chapter 290, §§(F)-(H); Chapter 291, §§12(B)-(D) and Chapter 292, §§11(B)-(D).

[10] The sections in the amended rules that deal with bill format are Chapter 290, §11(F); Chapter 291, §11(B) and Chapter 292, §10(B).

from Chapters 291 and 292 because notification of rate increases are addressed sufficiently in sections 10 and 9 of those rules respectively.

The initial Chapter 290 also contained a provision entitled “Disclosures” that required an ETC’s bills to disclose that a customer’s non-payment for optional services cannot result in a disconnection of that customer’s basic service. The FCC's "Truth-In-Billing" rules require carriers to differentiate between charges for which non-payment could result in the disconnection of a customer's basic service from other charges on a customer's bill. There is no need, therefore, to retain this section in the amended Chapter 290 and it has been removed.

The initial chapter 291 limited the amount of time that a non-ETC could collect for previously unbilled service to the previous billing period. We increased the amount of time that a non-ETC can collect for previously unbilled service from "the previous billing period" to "the past 12 months" in the amended Chapter 291. This modification is consistent with the current Chapter 81 and is consistent with the amended Chapter 290.

O. Payment Arrangements – Chapter 290 - §12

The initial Chapter 290 included a number of provisions relating to payment and payment arrangements that apply to ETCs only. As we noted in our February 2nd Notice, an ETC’s “universal service obligations necessitate additional efforts to keep consumers on the public switched network. In most cases, the ETC will be the ‘last chance’ for consumers to retain their basic telephone service.” A summary of the payment arrangement provisions of the initial Chapter 290 and our justification for those provisions can be found at pages 12 and 13 of the February 2nd Notice.

In comments submitted in Docket No. 2001-43, SRT&T argued that the requirement of a separate payment arrangement for basic and non-basic services is “burdensome and unnecessary.” SRT&T also asserted that non-ETCs and ETCs should have the same requirements regarding payment arrangements.

We continue to believe that the fundamental differences between basic service and all other services justifies the requirement for separate payment arrangements for basic and non-basic services as well as different payment arrangement requirements for ETCs and non-ETCs. It is critical for customers to pay charges for which non-payment may result in the loss of their basic service prior to paying charges for services for which non-payment will not result in the loss of their basic service. The amended rules, therefore, continue to require ETCs to establish separate payment arrangements for basic and non-basic services and are silent on payment arrangements for non-ETCs.

The payment arrangement provisions of the amended Chapter 290 are identical to the corresponding provisions of the initial rule with one exception. The initial rule would have required an ETC to notify customers that it could disconnect on 7 days notice for failure to comply with a payment arrangement. Section 12(B)(3) of the amended rule requires a 3 business day disconnection notice. This makes Chapter 290 consistent with the existing parallel requirement in Chapter 81. A corresponding change has been made to §13(D)(3)(a) of the amended Chapter 290.

P. Disconnection and Termination Procedures – Chapters 290 and 292 – §13; Chapter 291 §12

1. Chapter 290

A summary of the disconnection requirements in the initial Chapter 290, and our rationale for those requirements, can be found at pages 13 and 14 of the February 2nd Notice.

In comments submitted in Docket No. 2001-43, the OPA recommended that Chapter 290 be amended to "state explicitly that a local exchange carrier is prohibited from disconnecting or threatening disconnection for non-payment of amounts associated with toll or other non-local services." We agree with the OPA and have modified Chapter 290, §13(C)(1) to state explicitly that an ETC cannot disconnect basic service for the non-payment of toll or other non-local services.

Verizon strongly opposed "the proposed 'no-disconnect' rule for toll and optional services.... No evidence has been provided in the Notice that the current disconnect policy and procedure is ineffective in advancing universal service, unfair, or has generated customer complaints. The proposed rule would reverse a policy that has been working well for many years and has no apparent detrimental impact on subscribership levels among residential customers." Verizon asserted that the proposed new policy would encourage customers to "game the system" by running up toll charges with the knowledge that the carrier cannot disconnect their local service. Verizon estimated that the proposed new policy would increase its uncollectible revenue in Maine from $6.4M to $9.5M annually. Verizon argued that "from an operational standpoint, the 'no disconnect' rule would require additional personnel and major modification to Verizon Maine's operational and billing systems in order to comply."

AT&T also argued that the policy of "no disconnection of basic service for non-payment of optional service" is "problematic" and asserted that "[c]urrently, 29 states permit disconnection of local service for non-payment of long distance charges." AT&T asserted that it "experiences approximately 12% more bad debt in states that do not allow disconnection of local service for non-payment of toll."

We disagree with both Verizon and AT&T for several reasons. First, nothing in the initial rules prevents carriers from disconnecting a customer's toll or optional services for the non-payment of "toll or optional" charges. Second, the prohibition against disconnecting basic service for non-payment of toll or optional services is justifiable for competitive, as well as consumer protection reasons. In at least one sense, if an ETC were permitted to threaten disconnection of a customer's necessary basic service for that customer's non-payment of toll and optional services, the ETC would have a competitive advantage over other carriers that would not have such leverage. For these reasons, we concur with the other states that currently prohibit the disconnection of basic service for the non-payment of optional services.

In comments filed in Docket No 2001-43, the Telephone Companies asserted that requirements for disconnection in the initial Chapter 290 should be modified to make them consistent with existing requirements in Chapter 81. Mid-Maine, Verizon, SRT&T and TAM made similar comments. TAM and SRT&T further asserted that ETCs and non-ETCs should have the same obligations regarding disconnection.

We agree that the existing requirements in Chapters 81 and 86 should be reflected in this section of Chapter 290. Accordingly, §§13(D)(1) and (2) of the amended Chapter 290 require a 14-day disconnection notice for residential customers and a 7-day notice for non-residential customers if the reason for disconnection is failure to pay or make a payment arrangement on undisputed charges for basic service. We have also modified §13(D)(3) to require a 3 business day disconnection notice for failure to comply with the terms of a payment arrangement or a decision of the CAD or to provide a properly required deposit. Finally, we have modified §13(D)(6) of the amended Chapter 290 to provide that a disconnection notice is effective for a period of 10 business days after the disconnection date stated in the notice.

2. Chapter 291

The disconnection requirements in our initial Chapter 291, and our justification for those requirements, are discussed at pages14 and 15 of the February 2nd Notice.

In comments submitted in Docket No. 2001-43, AT&T argued that the disconnection notice requirements in Chapter 291 should be consistent with existing requirements in Chapter 81. AT&T also objected to the requirements in the initial Chapter 291 governing the content of a non-ETC's disconnection notice. Verizon took exception to the provision in §13(B)(4) of the initial rule that would have required a non-ETC's disconnection notice to include a statement of the customer's right to obtain service from an ETC. Verizon asserted that rather than a "right," a non-ETC's customer's ability to obtain service from an ETC "is a qualified privilege that is conditioned upon a customer's paying for service they use. Hence, if the Commission is going to require CLECs to notify customers about service from an ILEC, the notification should be accurate and state that the customer is entitled to telephone service from an ILEC provided that the customer does not have an outstanding bill with that ILEC and is otherwise qualified as an applicant."

Section 12(A) of the amended Chapter 291 has been modified to require 14 days prior notice for disconnection of residential customers and 7 days prior notice for disconnection of non-residential customers. This section is now consistent with existing requirements in Chapters 81 and 86 of our rules. In addition, section 12(B)(4) has been modified to clarify that customers have the right to "apply for service" with an ETC, as opposed to an entitlement to receive service from an ETC, as suggested by Verizon.

3. Chapter 292

The disconnection requirements in our initial Chapter 292 and our justification for those requirements, are discussed at page 15 of the February 2nd Notice.

In comments submitted in Docket No 2001-43, the OPA asserted that this section should be modified to require that an IXC's disconnection notice include the statement that a customer's non-payment of the customer's IXC toll bill will not result in the disconnection of the customer's basic service. The OPA noted that the initial Chapter 292 required that an IXC provide a termination notice seven days in advance of the stated termination date. The OPA supported this 7-day notice requirement. The OPA further asserted that if IXCs argue that the 7-day notice requirement puts them at undue financial risk, the rule could be modified to allow an IXC to track the customer's toll calls during the notice period. If the IXC finds that the customer's toll calling has increased substantially, the IXC could petition the Commission to disconnect the customer immediately.

AT&T recommended a spike provision similar to the one suggested by the OPA. AT&T also noted that the initial Chapter 292 termination requirements relating to a medical emergency are "problematic." "If AT&T is not also the local provider, AT&T would not know to keep the 1+ services up in the case of a medical emergency unless the customer advises AT&T up front about his situation." AT&T also suggested that the intial rule's termination provision relating to medical emergency "creates a situation that is ripe for fraud. Anyone can prevent disconnection by asserting a medical situation. The carriers are not going to be able to verify that the physician certifications are valid." AT&T concluded that because the customer has access to E-911 and a warm jack, the medical emergency limitation on an IXC's ability to terminate is unnecessary.

Sprint argues that LDD systems cannot distinguish between intrastate and interstate toll and requested that the distinction be dropped from the initial rule. Sprint also requested that the initial rule be amended to allow it to disseminate some of the required information through means other than its termination notice. Sprint asserted that it would incur substantial costs if it were required to modify its termination notices to include all of the information outlined in the initial rule.

We have modified the termination procedures for IXCs in three ways. First, in §13(A) we have reduced the notice requirement from seven calendar days to three calendar days. With this change, we attempt to balance the IXCs' concerns that seven days provides too large a window for customers to run-up toll charges with the OPA's concern that customers receive adequate notice of a pending disconnection of their toll service. Second, we have added a spike provision at §13(D) of the amended Chapter 292 that allows an IXC to disconnect on less than three days notice when the IXC notes a significant increase in the customer's usage. Third, we added a provision that requires an IXC to institute measures that prevent a customer who has been disconnected from accessing its network. This is intended to prevent a customer who believes that he has been "disconnected" from placing toll calls over the IXC's network and being charged "casual caller" rates for such calls. We seek comment on whether this provision will achieve its intended purpose. If not, please recommend a process to achieve this objective.

We did not, as recommended by the OPA, insert language requiring that disconnection notices contain a statement that non-payment of toll services will not result in the loss of basic service, nor did we include a specific threshold that would constitute a "spike" in usage that would allow an IXC to disconnect a customer's service with less than three days notice. The FCC's "Truth-In-Billing" rules require carriers to differentiate charges for which non-payment can result in the disconnection of basic service from charges for which non-payment cannot result in the disconnection of basic service. There is no need to also state this on the disconnection notice. We do seek comment, however, on the issue of a "spike" provision in the rule. Should we retain the spike provision, considering that we've reduced the notice period from seven days to three days? Should we include a threshold that would constitute a "spike" in usage? If so, what should that threshold be?

We also seek comment on the need to notify customers of a pending "disconnection" by IXCs. With the numerous choices now available to customers for making long distance calls, e.g. other toll carriers, dial around, cellular phones, prepaid calling cards, is there a need to regulate the process by which IXCs' terminate toll service or should this be a "market" decision? Please provide a detailed explanation for your position on this issue.

We also did not make any changes to this section relating to the medical emergency provision as suggested by AT&T. AT&T is concerned about customers using a "medical emergency" fraudulently to retain service and that the carriers have no way of verifying the authenticity of a Doctor's certification. We agree that it will be difficult for a carrier to know if a certification is valid or not. If a carrier has evidence that a certification is not valid, however, it can provide such evidence to the Commission as part of a request for a waiver of this provision of the rule. We seek comment on this aspect of the amended rule. Are there other ways of achieving the same goal, i.e. customers that have a person in their household that has a medical condition that requires phone service and must use 1+ dialing to reach emergency services, that we should consider?

Q. <u>Medical Emergency – Chapter 290 -§14; Chapter 291 - §13; Chapter 292 – §13(C)</u>

The initial Chapters 290-292 included limitations on disconnections when the customer, or a member of the customer's household, has a certified medical emergency. Our discussion of these medical emergency provisions in the initial rules can be found at pages 15-16 of the February 2nd Notice.

In comments submitted in Docket No. 2001-43, TAM asserted that the existing Chapter 81 requirements regarding medical emergencies should be incorporated into the amended rules and that the same medical emergency requirements should apply to ETCs and non-ETCs. SRT&T concurred with TAM's comments. The Telephone Companies suggested that, "in the event of an extended Medical Emergency period where the customer would otherwise be disconnected, the company could request a waiver so as to place a toll block on the line to prevent calls except to emergency services, where it appears that the company may be exposed to the risk of non-compensation for non-emergency calls." Mid-Maine characterized the medical emergency provisions as a "social services program" and recommended that the provision's disconnection limitations last for no longer than 90 days.

Verizon objected to the provision because "it would be subject to customer abuse," has no limitation on the duration of the emergency, offers no guidance on what qualifies as an emergency and makes no reference to a customer's willingness or ability to pay. Verizon strongly disagrees with the requirement that it must accept at the CLEC's election any CLEC customer with a medical emergency referred from a CLEC, and must do so without assessing any tariffed non-recurring charges. The proposed rule unfairly shifts all of the associated costs, including the connection costs otherwise applicable under a tariff to a service installation to Verizon Maine and eliminates any practical ability to recover these costs. Moreover, it places Verizon at a distinct competitive disadvantage, in that CLECs are relieved of the expense they would have to incur to protect the public safety in times of medical emergencies. There is simply no reason to allow a CLEC to enjoy the benefits of payment for services from a customer and then subsequently be able to avoid all possible costs associated with uncollectible revenues by shifting them to the ILEC.

Verizon also objected to the initial rule's extension of the period during which a customer has to obtain a physician's certification that currently exits in Chapter 81. Verizon also opposed the extension of the emergency period from the current 90-day maximum to an initial 60 days with unlimited renewals. Verizon asserted that "there is simply no incentive for a medical professional not to sign the medical certification request.... [T]he commission should establish conditions and a reasonable time period for a medical emergency certification." Sprint requested that the initial Chapter 292 be modified to require a customer to provide written notification of a medical emergency requiring interexchange service and written notification when the emergency has ended.

In response to commenters' concerns and to be consistent with the requirements of chapter 81, we modified this provision in all three rules to provide customers with 3 business days to obtain a certification of the medical emergency from a physician and to clarify that this provision applies only to residential customers. We did not, however, make any other modifications. We continue to believe that ETCs and IXCs (in some situations) must ensure that customers whose lives may depend upon their phone service not lose such service. This does not mean that we believe customers should receive free service. In situations where a prolonged period of non-payment is possible, a telephone carrier may request a waiver of this provision and propose an alternative to the outright disconnection of the customer's service (such as the proposal made by the "Telephone Companies" in its comments referenced above).

R. Warm Jack – Chapter 290 - §15; Chapter 291 - §14

The initial Chapters 290 and 291 required ETCs and non-ETCs to maintain a “warm jack” or similar service in all residences after disconnection. As we noted in our February 2nd Notice, a warm jack allows a consumer to plug in a phone and dial the local emergency services number. We further asserted that warm jacks are standard procedure in the telephone industry.

In comments submitted in Docket No. 2001-43, the OPA strongly supported the warm jack requirements in the initial rules. The OPA asserted that “[w]e can confirm that a ‘warm jack’ requirement is one that has the support of a number of safety-related agencies; including police and fire departments, and agencies providing services to abuse victims; and we urge the Commission to adopt versions of Chapter 290 and Chapter 291 that retain that requirement.” TAM noted that the proposed warm jack provisions would jeopardize the viability of the E-911 database, place a burden on facilities, impose costs on companies and tie up numbering resources. TAM recommended that Chapter 290 be modified to require ETCs to extend the time for complete disconnection of service for non-payment to 20 days. SRT&T’s comments tracked TAM’s comments. Mid-Maine urged that the warm jack requirement should last for no more than 30 days. Verizon asserted that the warm jack requirement does not reflect standard industry procedure as asserted in the February 2nd Notice and recommended that the requirement be deleted. AT&T recommended that there be a limitation in the duration of the warm jack requirement. AT&T also asserted that the warm jack requirement poses a technological problem for its Fixed Wireless service and recommended that wireless carriers should be excluded or granted a waiver for the warm jack provisions.

While we have included the warm jack requirement in the amended rules, we need more information about warm jack issues before we can make a final decision about whether to retain it. We therefore invite further comment on the warm jack provision’s impact on the E-911 database and numbering resources and any other limitation or constraint the requirement would impose on carriers. For example, we need to know how long a number can remain with a phone and whether a number can be in the E-911database without a corresponding customer name? We would also like carriers to specify the circumstances under which they think a warm jack should be maintained. We invite more information on the use of warm jacks by the telephone industry. We also invite further comment on the public safety implications of the inclusion or deletion of a warm jack provision in our final rules.

To gather more information on the public safety aspects of this issue, we are sending the amended rules to the Office of the Attorney General, the Department of Public Safety, and the E-911 Implementation Bureau with the request for additional information and comment on the warm jack provisions. Parties are also invited to comment on whether the Commission should initiate a separate investigation on this issue or address this issue elsewhere in its rules.

S. Reconnection of Service – Chapter 290 - §16

Under the initial Chapter 290, an ETC would have had to (1) reconnect basic service within 1 business day after the cause for the disconnection had been removed and (2) offer a customer a payment arrangement as a means for reconnection if the customer were disconnected for non-payment.

In comments filed in Docket No. 2001-43, Mid-Maine recommended that the rule be amended to require that if a customer's service had been disconnected for non-payment, "a down payment of one-third the amount due must be paid by credit card or money order prior to reconnection of the service." Verizon proposed the following three modifications to the initial rule's requirements regarding reconnection of service. "This provision should, at a minimum, include as a condition that a customer must establish a financial hardship before any payment arrangement is required.... Verizon Maine should not be required to offer or accept a payment arrangement for reconnection if a customer also has an additional line or substitute service available to them.... Verizon should not have to offer a payment arrangement to a customer who has previously entered into and failed to honor a payment arrangement prior to service disconnection."

We agree with commenters that ETCs should not have to offer a payment arrangement for the reconnection of service to a customer who was disconnected for breaking a payment arrangement. We also find that customers who have problems getting their basic service reconnected can seek the assistance of the CAD. We have, therefore, modified this provision in Chapter 290 to clarify that ETCs are not required to offer customers a payment arrangement for past due balances when they are seeking to have their basic service reconnected after being disconnected due to breaking a payment arrangement.

T. Optional Service Providers – Chapter 290 - §17

The initial Chapter 290 would have imposed several requirements on an ETC that offers optional services. These requirements are summarized on page 17 of the February 2nd Notice.

In comments submitted in Docket No. 2001-43, TAM argued that an ETC should not be required to explicitly label items for which basic service may not be disconnected. Verizon objected to the initial rule's requirement that a statement be included on the bill indicating that a failure to pay for optional services cannot be cause for disconnection. Verizon asserted that it "should be allowed to disconnect for all services on the bill."

As noted above, basic service is fundamentally different from optional services. We continue to believe that it is crucial that customers understand the difference between the two types of services and that basic service cannot be disconnected for failure to pay for optional services. We have therefore retained all of the requirements relating to ETCs that provide optional service in Chapter 290, §17 of the amended rules.

U. Service Option Disclosure – Chapter 292 - §11

The initial Chapter 292 would have required an IXC that offers more than one service plan to identify and describe a lowest cost service plan for a specific customer or applicant upon that customer's or applicant's request. A discussion of these disclosure requirements and our justification for these requirements is set forth at pages 9 and 10 of the February 2nd Notice.

In comments submitted in Docket No. 2001-43, Verizon asserted that this provision "wrongfully suggests that it is the IXC's obligation to pick the lowest cost service plan for a customer." Verizon argued that the rule should be amended to make it clear that while an IXC may describe the factors that influence the selection of a lowest cost plan, the customer is the one who must ultimately choose her service. AT&T asserted that this requirement is unnecessary in a competitive market, would impose a significant cost on IXCs and that the requirement would "inevitably lead to more customer complaints in a competitive market constantly responding to new competitive pressure with new plans."

Contrary to Verizon's suggestion, the service option disclosure provision in the initial rule does not require or suggest that it is the IXC's responsibility to pick a plan for a customer or applicant. The requirement, which we have included in the amended Chapter 292 at §11, directs an IXC to provide information to a customer or applicant upon request. We continue to believe that it is reasonable to require that such information be available to a customer or applicant when it is requested. See discussion in Section III (J)(1) of this Notice.

V. IXC Marketing Efforts – Chapter 292 - §12

The initial Chapter 292 contained limitations on the marketing activities of IXCs. A summary of these limitations, and our rationale for these limitations, can be found on page 17 of the February 2nd Notice.

In comments submitted in Docket No. 2001-43, Verizon objected to these requirements as unnecessary and asserted that the competitive market will deal with IXCs with insufficient marketing practices. AT&T expressed support for the marketing provisions but noted that there may be legitimate reasons for a marketing mistake and suggested the rule be amended to give IXCs "the flexibility to be able to give customers a 30-day credit for instance, if it finds itself inadvertently in violation of these requirements."

We continue to believe that IXCs that are unwilling or unable to provide the services they advertise represent a problem that needs to be addressed in Chapter 292. The marketing requirements of the initial Chapter 292 have been incorporated verbatim into §12 of the amended rule.

W. Dispute Resolution Procedures – Chapter 290 - §18; Chapter 291 – §15; Chapter 292 – 14

Each of the three initial rules contained a similar provision regarding dispute resolution. While the services that each type of carrier provides, and the requirements applicable to each type of carrier, differ, the procedures that each type of carrier must follow to resolve customer complaints and inquiries are similar under the initial rules. A discussion of the dispute resolution requirements of our initial rules can be found at pages 18-21 of the February 2nd Notice. Several commenters in Docket No. 2001-43 offered input on the dispute resolution provisions of the initial rules. Those comments, and are reaction to those comments, are summarized below. Because the requirements in each of the rules are similar, we have organized the following summary by subject.

1. Employees available

TAM asserted that the initial rules' requirement that a carrier have available an "adequate number" of employees who are "properly qualified" to respond to customer inquiries is ambiguous. TAM asserted that these types of procedures should be left up to the carriers and that if a customer finds a carrier's dispute resolution procedures unsatisfactory, that customer can file a complaint with the Commission. SRT&T and Mid-Maine's comments mirrored TAM's comments. Verizon asserted that "[n]o rule is going to make an unscrupulous carrier implement new processes or hire more personnel. To the extent a customer chooses an unscrupulous carrier, that is their choice to remedy. The dynamics of competition will force carriers to deliver on their promises and dedicate the resources to back them up. Otherwise, customers will take their business elsewhere."

We have retained this requirement in the amended rules. We continue to believe that is both proper and necessary for these rules to require carriers to have employees available to respond to questions and resolve disputes. We have endeavored to use language that provides the necessary requirements and simultaneously affords flexibility to the carriers as to how to satisfy those requirements.

2. Automated attendant

All three of the initial rules would have required the applicable carriers that use an automated attendant to comply with several requirements. Mid-Maine opposed these requirements as costly and unnecessary. AT&T asserted that its system would have to be changed nationally to comply with this state-specific provision. AT&T also asserted that this requirement would jeopardize the development of other automated system upgrades that it is currently developing. WorldCom recommended that these requirements be deleted because they are burdensome and would require significant modifications to WorldCom's automated systems.

We have tentatively removed the automated attendant requirements from each of the amended rules. We have replaced those requirements with the requirement that "[c]ustomers must be provided the opportunity to talk to a live customer representative without spending an unreasonable amount of time on hold and without being forced to navigate through an unreasonable number of menu levels in an automated phone answer system."[11] Through this new provision, we have endeavored to employ language that captures the ultimate objectives while affording flexibility to the carriers as to how to satisfy those objectives. We invite further comment on the need for, and wording of, these provisions. In particular, we are interested in comments on whether there is a significant problem regarding carriers' use of automated attendants and, if so, why the market has not corrected the problem. We are also interested in suggestions on additional ways to deal with any problems that may exist in this area.

3. Basic service disconnection limited

Section 19(D) of the initial Chapter 290 provided that "[a]n ETC may not threaten disconnection or disconnect the service of a customer for failure to pay for services or packages other than basic service." In written comments, Verizon objected to this requirement. Verizon also noted that, as a matter of clarification, the word "basic" should be inserted after the first "service" in the above-quoted sentence. For the reasons discussed throughout this Notice, we continue to believe that an ETC should not be able to disconnect a customer's basic service for that customer's non-payment of optional service. However, we agree with the clarification recommended by Verizon and have made the proposed change in §18(C) of the amended Chapter 290.

4. Consumer Assistance Division (CAD) complaint process

The initial rules (1) authorized the CAD to reject a complaint that is outside its jurisdiction or without merit and (2) required the CAD to complete its investigation of a complaint and issue a written decision "as soon as practicable." Mid-Maine and Verizon supported the authorization for the CAD to dismiss complaints. The Telephone Companies asserted that Chapter 81 currently requires the CAD to

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[11]This requirement is located at Chapter 290, §18(B); Chapter 291, §15(B) and Chapter 291, §14(B).

recommend a solution to a complaint within 20 days. The Telephone Companies assert that, absent some justification, the 20-day requirement in Chapter 81 should be reflected in these rules. Verizon acknowledged that 20 days may not be a sufficient complaint resolution period, but asserted that some sort of deadline should be established in the amended rules. Verizon suggested that the rules should be modified to require the CAD to resolve complaints in no more than 90 days.

We did not modify this section to include a time limitation for the resolution of complaints by the CAD. Though the CAD has a self-imposed goal of resolving all complaints within 30 days of their receipt, this is not possible with some complaints. With the increasing number of services being offered by carriers and the increasing number of carriers offering service, customer complaints are becoming more numerous and more complex. The CAD must have the time necessary to thoroughly research a complaint to render a fair and reasonable decision. In addition, because the CAD often relies on information provided by carriers to resolve complaints, unscrupulous carriers could intentionally withhold information requested by the CAD and cause the CAD to exceed the time limit for resolving complaints.

We did, however, modify this section in the amended rules[12] by adding a requirement that carriers provide the CAD with information it requests to resolve customer complaints within 10 days of the carrier's receipt of the request. If the carrier cannot meet the 10-day time limit, the carrier may request an extension from the Director of CAD or his designee. The purpose of this section is to explicitly provide the CAD with the authority to collect information from carriers necessary to effectively resolve customer complaints, as well as to ensure the timely submittal of such information. Chapter 81, section 13(E)(2) states that a CAD investigation may include the examination of, among other things, written records the CAD determines is necessary to investigate the complaint. Chapter 81 does not, however, provide a time limitation for the submittal of requested information. Chapter 89 requires a utility to provide "all written information within the utility's possession about the credit history of a customer" to the Commission upon request. Chapter 89 also does not have a time limitation for the submittal of requested information. While Chapter 81 and 89 seem to provide the CAD with the authority necessary to obtain information from carriers to resolve customer complaints, the provision proposed in the amended rules will clarify such authority and will provide a timeframe for the submittal of requested information.

We seek comment on the 10-day period for providing information to the CAD. Is this a sufficient amount of time for carriers to provide information to the CAD for the majority of complaints? If not, what is a reasonable timeframe for the submittal of information to the CAD? Does the extension provision provided in the amended rules sufficiently address situations where carriers will need additional time to provide requested information to the CAD? If not, what changes can be made to improve the extension process?

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[12] Section 19(G)(3) in Chapter 290; section 15(E)(3) in Chapter 291, and section 14(G)(3) in Chapter 292.

X. Records; Reports – Chapter 290 - §19

The initial Chapter 290 would have imposed several recording and reporting requirements on ETCs. These requirements, and our justification for these requirements, are summarized on page 21 of the February 2nd Notice.

In comments submitted in Docket No. 2001-43, TAM noted that the reporting requirements in the initial Chapter 290 track the existing reporting requirements in Chapter 81. TAM further noted that it had recently received a waiver from several of the Chapter 81 reporting requirements.[13] TAM therefore requested that the Chapter 81 requirements from which it was exempted should be removed from Chapter 290. SRT&T and Mid-Maine supported TAM's request. Verizon asserted that the 2-year record retention requirement in the initial rule is too long and should be reduced to "six to twelve months." Verizon further asserted that several of the annual reporting requirements should be deleted because they "bear no relevance to consumer protection" or "are simply not relevant to the rules."

We agree with TAM and have deleted the requirements from §19 of the amended Chapter 290 that correspond to the waiver we recently granted to TAM for certain Chapter 81 reporting requirements. Verizon had objected to several of the requirements we have deleted. Based on comments received in Docket No. 2001-43, we are unconvinced that additional requirements should be deleted from §19 of the amended Chapter 290. If Verizon wishes to pursue its objection to any of the remaining requirements in §19, it may do so in comments in the instant proceeding.

Y. Waiver – Chapter 290 - §20; Chapter 291 - §16; Chapter 292 – 15

Each of the initial rules included a provision that would have permitted the Commission to waive any provision in each rule that is not required by statute. These waiver provisions are discussed at pages 21 and 22 of the February 2nd Notice.

In comments submitted in Docket No. 2001-43, Verizon supported the waiver provision. No other commenter addressed the waiver provision. The waiver provisions from the initial rules have been incorporated into the amended rules without substantive modification.

IV. PROCEDURES FOR THIS RULEMAKING

This rulemaking will be conducted according to the procedures set forth in 5 M.R.S.A. §§ 8051-8058. Written comments on the proposed rule may be filed with the Administrative Director no later than February 8, 2002. Written documents should refer to the Docket Number of this proceeding, Docket No. 2001-852. No public hearing on

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[13] Telephone Association of Maine, Request for Waiver from Certain Provisions of Section 16(B) of Chapter 81, Docket No. 2001-110 (April 3,2001).

this matter is presently scheduled, but one will be held if requested by any five interested persons.

V. FISCAL AND ECONOMIC IMPACT

In accordance with 5 M.R.S.A. § 8057-A(1), the fiscal impact of the proposed rule is expected to be minimal. The Commission invites all interested parties to comment on the fiscal impact and all other implications of the proposed rule.

VI. SERVICE

The Administrative Director shall send copies of this Notice and the attached Rules to:

1. All telephone utilities operating in Maine;

2. The American Association of Retired People (AARP);

3. The Maine Community Action Association;

4. The Maine Council of Senior Citizens;

5. The Maine State Housing Authority;

6. The Maine State Planning Office;

7. The Department of Public Safety;

8. The Department of the Attorney General;

9. The E911 Implementation Bureau;

10. Any person who has filed within the past year a written request for notice of rulemakings;

11. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5); and

12. Executive Director of the Legislative Council, 115 State House Station, Augusta, Maine 04333-0015 (20 copies).

Accordingly, it is

O R D E R E D

That the Administrative Director send copies of this Notice of Rulemaking and attached proposed Rules to all persons listed above.

Dated at Augusta, Maine, this 31st day of December, 2001.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director